

CV-15-539129
Court file no.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**JOEL ZIMMERMAN p/k/a "deadmau5"
and RONICA HOLDINGS LIMITED**

Plaintiffs

and

PLAY RECORDS INC.

Defendant



STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE

UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: October 26, 2015

Issued by
Local Registrar

Address of
court office: 10th Floor,
393 University Ave.
Toronto, Ontario
M5G 1E6
Ph. (416) 327-5440
Fa. (416) 327-5445

TO: Play Records Inc.
61 Austin Terrace
Toronto, ON M5R 1Y7

1. Joel Zimmerman ("Zimmerman") claims,

- (a) damages in the amount of \$10,000,000 for breach of contract;
- (b) damages in the amount of \$10,000,000 for infringement of his moral rights pursuant to the *Copyright Act*, R.S.C., 1985, c. C-42;
- (c) damages in the amount of \$10,000,000 for false endorsement pursuant to the *Competition Act*, R.S.C., 1985, c. C-34;
- (d) an interim, interlocutory, mandatory and/or permanent injunction;
- (e) aggravated, exemplary and punitive damages, each in the amount of \$10,000,000;
- (f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (g) the costs of this action on a substantial indemnity basis; and
- (h) such further and other relief as this honourable court may deem just.

2. Zimmerman and Ronica Holdings Limited ("Ronica") jointly and severally claim:

(a) damages in the amount of \$10,000,000 for trademark infringement pursuant to the *Trade-marks Act*, R.S.C., 1985, c. T-13;

(b) damages in the amount of \$10,000,000 for passing off and unfair competition pursuant to the *Trade-marks Act*, R.S.C., 1985, c. T-13, and at common law;

(c) further and in the alternative, an accounting of revenues and profits in regard to items (a) and (b) above;

(d) an interim, interlocutory, mandatory and/or permanent injunction;

(e) aggravated, exemplary and punitive damages, each in the amount of \$10,000,000;

(f) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

(g) the costs of this action on a substantial indemnity basis; and

(h) such further and other relief as this honourable court may deem just.

Background

3. Zimmerman, professionally known as "deadmau5", is an internationally-acclaimed musician, composer, producer and entertainer. Zimmerman resides in Milton, Ontario.
4. Ronica is Zimmerman's corporate entity holding his trademarks.
5. The defendant is an Ontario corporation operating as a dance music label. The defendant's sole officer and director is Melleny Brown, also known as Melleny Melody or "Mellefresh", who is or was a voice actress in children's animated film and television productions and who is a dance music artist and performer ("Mellefresh"). The defendant's registered office is at Mellefresh's home, in Toronto, Ontario.
6. In or about early 2006, Zimmerman was engaged by the defendant to deliver remixes of two sound recordings embodying songs written by Mellefresh. They were entitled "Beautiful, Rich n Horny" and "The Money". Zimmerman duly delivered five remixes of those two tracks and was paid.

7. Mellefresh thereafter proposed that Zimmerman should sign a music publishing agreement with her company, as well as a personal management agreement to advise, guide and counsel him in respect to his budding career in the entertainment field.
8. Zimmerman agreed to sign these agreements, largely because the defendant appeared to have financial resources through Mellefresh's husband, who was or had been a successful producer of children's' film and television properties, and because Zimmerman was not yet established financially.
9. The parties entered into a Music Publishing Agreement dated June 1, 2006, and a Personal Artist Management Agreement dated July 1, 2006.
10. The parties did not enter into a written record production agreement because Zimmerman already had been self-releasing his own tracks on his own record label, and because he hoped to secure an artist signing or an exclusive license agreement with a much more formidable record label or indeed with a major label.
11. In about 2006 and 2007 Zimmerman's professional career was starting to take off. However, Zimmerman found that his rising success was due to his own efforts independently of Mellefresh and indeed that Mellefresh

and the defendant were holding him back. Despite early collaborations with Mellefresh, he was not interested creatively in continuing to work with her as an artist. Yet, she wanted to elevate her own career as a recording artist by continuing an association with him; and, Zimmerman felt she was not professionally suited or competent to be managing him. This was causing conflicts between them.

12. In about 2007 Zimmerman relocated to London, England, on his own, to pursue opportunities there in the dance music scene. He came into contact with Dean Wilson who worked at 24 Management, which by that time already was managing an up-and-coming artist by the name of Calvin Harris – who has gone on to become a highly successful electronic music artist, record producer, songwriter and performer in his own right.
13. 24 Management was a part of Three-Six-Zero Group, which already had essential skills and connections that Mellefresh and the defendant sorely lacked. Three-Six-Zero-Group has subsequently joined forces with Roc Nation, LLC – originally founded by Shawn Carter, professionally known as “Jay Z” – to become a highly successful, globally-recognized entertainment and music management company.
14. During the period between about 2007 and 2008, Zimmerman was prolific, writing and producing dance music tracks including his first hit,

entitled "Faxing Berlin". By then, Zimmerman wished to sever ties with Mellefresh and her company in order to pursue the opportunities that had become available through his own efforts in London, England, with Dean Wilson, 24 Management and Three-Six-Zero-Group.

15. A dispute therefore ensued between Mellefresh and Zimmerman because she had him locked-into a written agreement through her company as his manager, when he no longer wished to work with her as an artist, and rather than assisting his career, essentially she was hindering it.
 16. Mellefresh advised Zimmerman and Dean Wilson that if Zimmerman wanted to move on, she would not stand in their way. However, on June 6, 2008, Mellefresh had the defendant issue a statement of claim against Zimmerman, Dean Wilson, 24 Management and Three-Six-Zero-Group. (the "2008 Action"). In the 2008 Action, the defendant sought damages and an injunction preventing Dean Wilson, 24 Management and Three-Six-Zero-Group from helping Zimmerman move forward with his career.
 17. In order to resolve the claims made by Mellefresh through her company and to settle the lawsuit, Zimmerman was forced to assign defendant ownership of his early sound recordings and musical compositions.
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18. On December 22, 2008, the 2008 Action was settled by a comprehensive, binding, irrevocable 66-page Settlement and Release Agreement signed and exchanged between them as of that date (the "Settlement Agreement"). In the negotiating and drafting thereof, all of the parties thereto were represented by independent legal counsel.
19. It was expressly agreed in the Settlement Agreement that it was the entire agreement between the parties and was to supersede all prior written or oral agreements between them.
20. As provided in the Settlement Agreement, in order to get away from the defendant so that he could work with a *bona fide* music management company, Zimmerman had to pay the defendant a specific sum of money and assign to the defendant ownership of the musical compositions and sound recordings created by him up until the 2008 Action, including the rights to his critically-acclaimed hit "Faxing Berlin". As a result of same, the parties all released each other and the defendant agreed that it would obtain a court order dismissing the 2008 Action on consent without costs.
21. The Settlement Agreement contained express rights and obligations between Zimmerman and the defendant as to how the defendant was entitled to use the said, specifically-identified compositions and sound recordings, as follows:

- (a) if the defendant wished to create and release so-called “new” remixes of the sound recordings listed in Schedule “A” to the Settlement Agreement, the defendant was required to obtain Zimmerman’s prior written consent because any “new” remix might entail changing the melody and/or lyrics, if any, of the underlying musical composition embodied on the sound recording, thus altering the integrity of the music (“Future Remix Recordings”);
 - (b) for the remixes that Zimmerman previously had made in or about January, 2006, it was confirmed in paragraph 16 of the Settlement Agreement, that the defendant already owned those specifically-identified remixes and was entitled to further exploit them “as-is” because those recordings were not to be altered by so-called remixing any “new” musical elements into the pre-existing recordings and thus the integrity of the musical compositions and/or recordings would not be altered (“Pre-Existing Remixed Recordings”).
22. In the case of the Future Remix Recordings, the Settlement Agreement expressly provided that Zimmerman did not waive his moral rights with respect to any so-called future remixes (i.e. the addition of any new musical elements combined into the pre-existing musical composition embodied on the originally created recording) – if any were to be made –

because by definition any future remixes had not been created yet. Thus, Zimmerman would have no way of knowing in advance whether they were objectionable or whether he would want his name disassociated with them; i.e. in order to protect his right of paternity to remain anonymous and not be associated with them.

23. In the case of the Pre-Existing Remixed Recordings, the Settlement Agreement provided that Zimmerman waived his moral rights with respect thereto because the Pre-Existing Remixed Recordings had already been created by Zimmerman himself at the time he entered into the Settlement Agreement. Thus, Zimmerman was not concerned about the exploitation of the Pre-Existing Recordings because they were not going to be altered.
24. By the time that the Settlement Agreement had been entered into in December, 2008, Zimmerman already had gained significant international recognition, stature and goodwill.
25. The Settlement Agreement carefully and specifically laid-out how the defendant could use Zimmerman's name, approved likeness, approved biographical materials, approved professional names, approved logos, approved trade-names and approved trademarks. It permitted the aforesaid intellectual property to be used in connection with the specifically-mentioned remixes in Pre-Existing Remixed Recordings, and

to be used in connection with remixes that might subsequently be approved by Zimmerman from Schedule "A" (i.e. to approved Future Remix Recordings).

Events After the 2008 Settlement

26. Zimmerman duly paid the defendant the settlement amount in full, but the defendant refused to obtain an order having its 2008 Action dismissed. Instead, the defendant sought to contest and/or re-open the settlement, arguing among other things that the defendant was being defeated in its efforts to exploit the catalogue of tracks that had been included in the settlement, including Zimmerman's hit single, "Faxing Berlin". The defendant brought an application in the Ontario Superior Court of Justice to re-open the settlement in about 2010, which it never proceeded-with, and which it abandoned formally in 2015. As for the 2008 Action, for which the defendant was supposed to have obtained an order of dismissal on consent, the defendant never proceeded with that either. Instead, it engaged Zimmerman in approximately six years of sporadic, privileged discussions, then had its action stayed by order of the court in about February, 2015.
27. Zimmerman says that the defendant is taking steps to circumvent its obligations under the 2008 Settlement Agreement, thereby purporting to

take advantage of the benefits of the Settlement Agreement without complying with its obligations under the Settlement Agreement and/or in a manner that is damaging to Zimmerman, in the ways that are described below.

Breach of Contract

28. The defendant has released sound recordings of remixes of Future Remix Recordings, without obtaining the express prior written consent of Zimmerman. Those sound recordings are not of good technical and commercial quality, and have tarnished Zimmerman's brand, causing damages to Zimmerman.
29. Zimmerman has made objection to these unauthorized remixes through his legal counsel. Through his legal counsel, Zimmerman has tried to get the problem resolved to no avail, making this lawsuit therefore necessary.

Infringement of Moral Rights

30. The defendant has released remixes of Future Remix Recordings and Pre-Existing Remixed Recordings, that infringe on Zimmerman's moral rights, insofar as they prejudice Zimmerman's honour and reputation by distorting, mutilating or otherwise modifying his original work. Further and

in the alternative, Zimmerman seeks to remain anonymous and not be associated with these bastardizations of his works. Instead, he has been caused damages by their exploitation by the defendant.

Trademark Infringement & Passing Off/ Unfair Competition

31. Ronica is the registered owner of Zimmerman's word mark DEADMAU5 and the DEADMAU5 AND SIDE FACE DESIGN logo in Canada, the United States and other territories globally, *inter alia*, in connection with music products and merchandise.
32. Pursuant to the 2008 Settlement Agreement, the defendant is only licensed or permitted to use Zimmerman's trademarks in connection with approved remixes of Future Remix Recordings and in connection with the remixes specifically identified in Paragraph 16 of the 2008 Settlement Agreement.
33. The defendant has been using Zimmerman's trademarks in an unauthorized manner, using those trademarks in connection with the exploitation of remixes of Future Remix Recordings that have not been approved by Zimmerman, and using those trademarks in connection with remixes not specifically identified in Paragraph 16 of the 2008 Settlement Agreement.

34. In particular, at the time this statement of claim is being issued, the defendant is setting about to release or re-release a work entitled “deadMau5 & Neonstereo Remix’ of MeleeFresh/ Dirty 30’s ‘Money’”, which is a mashup of Zimmerman’s remix of “Money” with a remix of the same composition by an Australian remixer professionally known as “Neonstereo” (the “Mashup”). Zimmerman did not work with Neonstereo on the creation of this work, nor did he approve it, nor does he even remotely endorse it. The Mashup contains parts that have been contributed by authors who were not collaborators, and is a separate, derivative work. The 2008 Settlement Agreement is silent about mashups of Pre-Existing Remixed Recordings – i.e. it contains no authorization or license for Zimmerman’s remixes to be mashed-up with other works, whether to create new works, or otherwise. Since there is no authorization or license in the 2008 Settlement Agreement for the defendant to use Zimmerman’s trademarks in connection with making mashups, it is an infringement for Zimmerman’s trademarks for them to be used in connection with the commercial exploitation of the Mashup – which is not Zimmerman’s work – causing confusion and thereby causing damages to Zimmerman.
35. Further and in the alternative, the foregoing constitutes passing off or unfair competition whereby the defendant is taking a free ride on

Zimmerman's goodwill by pretending that its musical works are those of Zimmerman. The actions of the defendant thereby are likely to raise confusion in the mind of a consumer with respect to the source of the musical works as to whether they are Zimmerman's, the defendant's or third parties' works. By the foregoing Zimmerman and Ronica have been caused damages.

False Endorsement

36. The defendant has been knowingly or recklessly making, or permitting the making of, representations to the public that are false or misleading in a material respect, whereby the defendant has been marketing its old sound recordings as "new" releases "from" Zimmerman; to wit, any of the sound recordings that the defendant may legitimately be using were made by Zimmerman no later than in about 2007 and are not new. This is material because the public tends to seek new releases from recording artists such as Zimmerman, and search engines on the Internet and other forms of digital music distribution including streaming sites favour or promote content that is perceived to be newer versus content that is perceived to be older. This is causing Zimmerman's own, new releases to be overshadowed, causing damages to Zimmerman as well as in the marketplace.

Aggravated, Exemplary or Punitive Damages

37. The defendant has shown a cynical disregard for Zimmerman and Ronica's rights, taking a calculated risk that the benefit it can achieve through its infringing activities will exceed the damages sought or obtainable by Zimmerman and Ronica – where its profits or gains, whether due to lack of proper accounting records or because the benefits are intangible such as the value of fame to the defendant and its owners by riding on Zimmerman's coattails – are difficult to evaluate.

The plaintiffs propose that this action be tried at Toronto, Ontario.

Date: October 26, 2015

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Court File No. **CV-15-539129**

JOEL ZIMMERMAN p/k/a "deadmau5" et al
Plaintiffs

PLAY RECORDS INC.
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at
Toronto

STATEMENT OF CLAIM

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